

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

)
) MDL NO. 1456
) Civil Action No. 01-12257-PBS
) Subcategory No. 03-10643

THIS DOCUMENT RELATES TO:

The City of New York, et al.

v.

Abbott Laboratories, Inc., et al.

)
) Judge Patti B. Saris
)
)
)
)

**MAY 2011 STATUS REPORT ON BEHALF OF
THE CITY OF NEW YORK AND NEW YORK COUNTIES**

The undersigned counsel for the City of New York and New York Counties in the above-captioned action (hereinafter referred to as “plaintiffs”) hereby submit the attached Status Report for May 2011, in accordance with the Court’s June 17, 2004 Procedural Order.

Dated: May 2, 2011

Respectfully submitted,

**City of New York and New York Counties in
MDL 1456 except Nassau and Orange, by**

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**May 2011 Status Report on Behalf of the
City of New York and New York Counties**

Joint Motion to Extend Time to Complete Expert Discovery

On April 19, 2011, the court entered an order granting the parties' joint motion to extend the deadlines to complete discovery. *See* Docket No. 7507, Sub-docket No. 287. The Order modified the deadlines as follows: (1) all fact discovery timely sought by defendants to be completed by February 18, 2011, (2) plaintiffs' expert depositions to be completed by March 17, 2011, (3) defendants' expert reports to be served by April 14, 2011, and (4) defendants' expert depositions to be completed by May 31, 2011.¹

On May 2, 2011, the parties jointly moved to extend the time to complete expert discovery as follows: (1) depositions of plaintiffs' experts to be completed by May 12, 2011; (2) defendants expert reports and other materials in compliance with Fed. R. Civ. P. 26(a)(2)(B) to be served by May 27, 2011; and (3) depositions of defendants' experts to be completed by July 15, 2011. *See Joint Motion to Extend Time to Complete Expert Discovery* [Docket No. 7522, Sub-docket No. 288]. This motion remains *sub-judice*.

Discovery

1. Motion to Quash & Motion to Seek Protective Order

On January 25, 2011 plaintiffs, on behalf of themselves and Dr. Thomas Fanning (hereinafter referred to as "movants"), filed a motion for protective order and a motion to quash the tardy January 10, 2011 subpoena issued by defendants to former New York State Department of Health employee Dr. Fanning. *See* Docket No. 7386, Sub-docket No. 272; Docket No. 7387, Sub-docket No. 273.

On January 27, 2011 defendants filed their Memorandum in opposition. *See* Docket No.

¹ On February 3, 2011 Magistrate Judge Marianne B. Bowler entered an electronic order only in the Iowa sub-docket 07-CV-12141 granting the parties' joint motion to extend the discovery deadline.

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On February 3, 2011 movants filed a motion for leave to file a reply memorandum in further support of their motion. *See* Docket No. 7402, Sub-docket No. 278. The motion remains *sub-judice*.

2. Defendants' Motion to Compel the production of privileged documents withheld by New York State Department of Health ("NY DOH")

On December 23, 2009, defendants filed a motion to compel production of all documents which NY DOH has withheld on the basis of the deliberative process privilege. *See* Docket No. 6810, Sub-docket No. 191.

On January 20, 2010, the office of the New York Attorney General filed its Opposition to Defendants' Joint Motion to Compel the Production of Documents from NY DOH. *See* Docket No. 6852, Sub-docket No. 197.

On June 21, 2010, the motion was referred to Magistrate Judge Marianne B. Bowler. *See* June 21, 2010 electronic entry. It remains *sub-judice*.

3. Motion to Compel Discovery from Defendant Merck

Plaintiffs and Merck have reached a settlement agreement in principle. Plaintiffs will withdraw their motion to compel [Docket No. 6487, Sub-docket No. 158].

CERTIFICATE OF SERVICE

I, Kathryn Allen, hereby certify that on the 2nd day of May, 2011, I caused a true and correct copy of the above May 2011 Status Report for the City of New York and New York Counties to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: May 2, 2011

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